

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 94-4

September 30, 1994

EFFECTIVE DATES – OVERPAYMENTS SHOWN ON TIMELY AND DELINQUENT PRIOR YEAR RETURNS

ISSUE

What is the effective date of a credit of an overpayment to current year's estimated tax where the credit arises from a timely or delinquent prior year return designating an overpayment to be applied to the current year's estimated tax?

FACTS

Situation 1: Taxpayer A is an individual calendar year taxpayer. He filed his 1992 return on October 15, 1993, showing an overpayment of \$20,000. On that 1992 return he requested that the \$20,000 overpayment be applied to his 1993 estimated tax liability.

Situation 2: Same facts as Situation 1, except that the 1992 return was not filed until April 1, 1994.

LAW AND ANALYSIS

Revenue and Taxation Code § 19362 (renumbered from § 19064 effective 1/1/94) provides:

§ 19362. The Franchise Tax Board is authorized to prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined by the taxpayer or the Franchise Tax Board to be an overpayment of the tax for a preceding taxable year.

(This section is based on and substantially similar to Internal Revenue Code § 6402(b).)

Revenue and Taxation Code § 19002(c)(2) (renumbered from § 18551.1(c)(2) effective 1/1/94) provides:

(2) For purposes of Sections 19306 and 19340, any amount paid as estimated tax under Section 19025 or 19136 of this code or Section 13043 of the unemployment Insurance Code for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2 (without regard to any extension of time for filing the return).

(This paragraph is based on and substantially similar to Internal Revenue Code §

6513(b)(2).)

Revenue and Taxation Code § 19002(e) (renumbered from § 18551.1(e) effective 1/1/94) provides:

(e) If any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, that amount shall be considered as a payment of estimated tax in accordance with Section 19007, for the succeeding taxable year, and no claim for credit or refund of the overpayment shall be allowed for the taxable year in which the overpayment arises.

(This subdivision is based on and substantially similar to Internal Revenue Code § 6513(d).)

As the Franchise Tax Board has not issued regulations under these sections and the Revenue and Taxation Code is in substantial conformity with the Internal Revenue Code, the Franchise Tax Board will follow federal regulations, procedures, ruling and decisions. (See FTB Notice 89-277, Taxpayer's Bill of Rights, Franchise Tax Board Chief Counsel Rulings Guidelines, Section H.)

Rev. Rul. 88-98, 1988-1 C.B. 356, considered the effective date of the credit of an overpayment to a subsequent year's estimated tax liability for purposes of computing interest due on a subsequently determined underpayment for the year of overpayment. Reconsidering the holding of Rev. Rul. 83-112, 1983-2 C.B. 247, in light of *Avon Products, Inc. v. United States* (2d Cir. 1978) 588 F.2d 342, holds that the date the taxpayer gained the benefit of the funds as a payment on account of the succeeding year's estimated tax determines the date the prior year's tax becomes unpaid for purposes of computing interest on a subsequently determined underpayment.

Where the election to credit an overpayment to subsequent year's estimated tax is made on a timely filed return, including a return filed under extension, the taxpayer gains the benefit of the funds as payment on account (i.e. the credit is effective and the overpayment arises) as of the original due date of the return. As a result, unless the taxpayer directs otherwise, the credit will be applied to the first estimated tax payment of the subsequent year. (Rev. Rul. 84-58.)

Where such an election is made on a delinquent return, however, the credit is effective and the overpayment arises on the date the delinquent return is filed. (Rev. Rul. 88-97, 1988-1 C.B. 355, *Situation 3*; Rev. Rul. 77-475, 1977-2 C.B. 476, as reinstated and modified by Rev. Rul. 84-58; G.C. M. 39772, Jan. 23, 1989.).

FTB Notice 91-3, Automatic Paperless Extensions, Personal Income Tax Law, (November 1, 1991), provided that the Franchise Tax Board will allow an automatic six-

month extension to file Personal Income Tax returns without the need for a written request if the return is filed within six months of the original due date.

HOLDING

In *Situation 1*, the 1992 return was filed on the extended due date, (October 15, 1993) and so the overpayment arose and the credit is effective as of the original due date of the 1992 return (April 15, 1993) and will be credited to the first estimated tax installment payment due for 1993 (April 15, 1993).

In *Situation 2*, the 1992 return was delinquent. Therefore, the overpayment shown on that return did not become effective as a payment of 1993 tax until the date the 1992 return was filed, (April 1, 1994). As this occurred long after the due date of the first installment (April 15, 1993), the overpayment cannot be credited to the first installment of 1993 estimated tax. As the return was delinquent, the overpayment arose (and is credited to the 1993 tax year) on the date the 1992 return directing that the overpayment be transferred to 1993 was filed (April 1, 1994).

DRAFTING INFORMATION

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